SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30

1. REQUISITION NUMBER	

2. CONTRACT NO. W91QUZ-11-A-0002	3. AWARD/EFFECTIVE DATE 25-Jan-2011	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE

7. FOR SOLICITATION INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER *(No Collect Calls)*	8. OFFER DUE DATE/LOCAL TIME

9. ISSUED BY   CODE   W91QUZ

NATIONAL CAPITAL REGION CONTRACTING CTR
2461 EISENHOWER AVENUE
ALEXANDRIA VA 22331-1700

TEL:
FAX:

10. THIS ACQUISITION IS

[X] UNRESTRICTED

[ ] SET ASIDE: % FOR

  [ ] SB
  [ ] HUBZONE SB
  [ ] 8(A)
  [ ] SVC-DISABLED VET-OWNED SB
  [ ] EMERGING SB

SIZE STD: 25M   NAICS: 511210

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED
[ ] SEE SCHEDULE

12. DISCOUNT TERMS

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION
[ ] RFQ   [ ] IFB   [ ] RFP

15. DELIVER TO CODE	16. ADMINISTERED BY CODE
SEE SCHEDULE	**SEE ITEM 9**

17a. CONTRACTOR/OFFEROR   CODE   1TQ19

VIRTUAL CORPORATION, INC
SCOTT REAM
98 RT 46 STE 12
BUDD LAKE NJ 07828-1818

TEL. 973-426-1444 EXT. 206   FACILITY CODE

[ ] **17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER**

18a. PAYMENT WILL BE MADE BY   CODE

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED [ ] SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	SEE SCHEDULE				

25. ACCOUNTING AND APPROPRIATION DATA	26. TOTAL AWARD AMOUNT (For Govt. Use Only)
	$0.00

[ ] 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED.   ADDENDA [ ] ARE [ ] ARE NOT ATTACHED

[ ] 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED.   ADDENDA [ ] ARE [ ] ARE NOT ATTACHED

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN   COPIES
[ ] TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

29. AWARD OF CONTRACT: REFERENCE
[ ] OFFER DATED   . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR	31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)	31c. DATE SIGNED
	Donna S. Harris	25-Jan-2011

30b. NAME AND TITLE OF SIGNER *(TYPE OR PRINT)*	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER *(TYPE OR PRINT)*
		DONNA S. HARRIS / CONTRACTING OFFICER TEL: 703-325-4625 EMAIL: donna.harris1@us.army.mil

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449   (REV 3/2005)
Prescribed by GSA
FAR (48 CFR) 53.212

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS (CONTINUED)					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	SEE SCHEDULE				

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
		32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
☐ PARTIAL ☐ FINAL			☐ COMPLETE ☐ PARTIAL ☐ FINAL	
38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY		

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY *(Print)*
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	
		42b. RECEIVED AT *(Location)*
		42c. DATE REC'D *(YY/MM/DD)* 42d. TOTAL CONTAINERS

Section SF 1449 - CONTINUATION SHEET

<u>DOD ESI AGREEMENT</u>

<div align="center">

Blanket Purchase Agreement
DoD Enterprise Software Agreement (ESA)

</div>

In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD) and Virtual Corporation enter into an agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule (FSS) Contract GS-00F-0003V,

FSS Contract Blanket Purchase Agreements (BPAs) reduce contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

The Enterprise Software Initiative (ESI) is a joint DoD project to develop and implement a DoD enterprise process. This BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

Attachments to this agreement are:

> Attachment A – Product and Price List
> Attachment B – License Agreement
> Attachment C – Report of Sales Format
> Attachment D – Fees and Payments

A. TERMS AND CONDITIONS

1.   Pursuant to GSA FSS Contract Number GS-00F-0003V, Virtual Corporation
 agrees to the following terms of a BPA with the National Capital Region Contracting Center.   All orders placed against this BPA are subject to the terms and conditions of the FSS Contract. The items on this BPA are set forth in Attachment A. License terms and conditions applicable to products acquired under this BPA are defined in the Virtual Corporation License Agreement included as Attachment B. The Order of Precedence for resolving any inconsistency between the Commercial License and the GSA **contract terms shall be as specified in the GSA contract's Commercial Item c**lause, FAR 52.212-4, and the provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.

2. Extent of Obligation. The Government cannot calculate the approximate volume of purchases through this agreement. The amount of purchases are not to exceed $49,000,000.00. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

3. Funds Obligation. The BPA does not obligate any funds. Funds will be obligated on each delivery order.

4. BPA Term. The Period of Performance will run concurrently with the underlying GSA Schedule. This expiration is contingent upon the Contractor maintaining or renewing a GSA FSS Schedule. The BPA will be reviewed annually to ensure that it still represents a "best value".

5. Pricing Terms. Attachment A provides unit prices as explained below. Prices shall not escalate, and Attachment A is not subject to upward adjustment during the term of the BPA. Spot discounting is encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the prices. The contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA, ACT), as calculated on the customer orders, in accordance with Attachment D.

6. Discount Terms and Conditions. **Pursuant to Virtual Corporation's** FSS Contract Number GS-00F-0003V the following discount terms and conditions are offered:

   ☐ Software orders:

      o Any software order of $150,000.00 or greater value will receive an additional 1% discount off of published GSA prices.

      o Any software order of $250,000.00 or greater value will receive an additional 2% discount off of published GSA prices.

   ☐ Professional Services and Training orders: Prices for Professional Services or Training orders are provided at four (*4*) discount levels as determined by the total value of the order:

      o 1.0% discount for an order commitment of $150,000 over 1 year

      o 1.5% discount for an order commitment of $250,000 over 1 year

      o 5.0% discount for an order commitment of $500,000 over 1 year

      o 7.5% discount for an order commitment of $750,000 or more over 1 year

The Contractor is responsible for the tracking of cumulative value and timely notification to the Government when each discount level is achieved.)

7. Out-Year Prices. Discount levels are achieved by dollar value only (excluding expense reimbursement) and are not governed by agreement year. Any purchased quantity that is creditable towards a volume discount level is cumulative for the total term of the BPA. Any creditable purchases made are credited immediately to determine the applicable discount level. The unit price for the discount level below is not subject to upward adjustment during the term of the BPA.

On total BPA purchases exceeding	Additional Discount
$10,000,000.00	0.25%
$20,000,000.00	0.50%
$30,000,000.00	0.75%
$40,000,000.00	1.00%

8. Price Reduction.

8.1 Most Favored Customer Prices. The prices under this BPA shall be at least as low as the prices that Virtual Corporation has under any other contract instrument under like terms and conditions. If at any time the prices under any other contract instrument become lower than the prices in this BPA, this BPA will be modified to include the lower prices.

8.2 SmartBUY Transition. OMB has announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring software. The GSA is the designated Executive Agent for SmartBUY. The initiative will establish software enterprise licensing on a government-wide basis. If during the term of this ESA, Virtual Corporation and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD, neither Virtual Corporation or its resellers will preclude the DoD from licensing products or purchasing services under a SmartBUY agreement.

ATTACHMENT B LICENSE AGREEMENT

Continuation of ESI Agreement…

9.   License Agreement. (See Attachment B below in this document for complete license terms and conditions.)

Notwithstanding any provision to the contrary, licenses are transferable within the authorized users as stated in paragraph B.1. Software licenses purchased under this BPA are perpetual licenses subject to the licensing provisions in Attachment B and the terms of the GSA Contract. A license may be hosted in the production data center and the same user's back-up data center (not to be used concurrently). Any delivery order issued hereunder will serve as proof of purchase. Upon validation and receipt of software, customers will be provided an electronic version of the license agreement. The following provisions will be included in a license addendum if the BPA is awarded to other than the software publisher:

9.1 **Functionality Replacement and Extended Support**. If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or Virtual Corporation, provides this same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software at no additional licenses or maintenance fees. However, throughout the term of this agreement, the contractor will provide support services for a period of one year.

9.2 **Rights of Survivorship of the Agreement.** This Agreement shall survive unto Virtual Corporation, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement notwithstanding the acquisition or merger of Virtual Corporation by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

9.3 **Audits**. In lieu of any audit provisions in the license agreement, Licensee may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. Licensee may permit Virtual Corporation to have access to Licensee records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All Virtual Corporation personnel must have appropriate security clearances to gain access to Licensee site or data.

10. **Media.**
This software is not provided on hard copy media. Software is downloaded from a secure FTP site provided to licensee once the order is confirmed. Upon Credit Card or Purchase Order Approval, the end-users will be sent an email confirmation containing instructions for downloading the software.

11. **Support and Maintenance.**

11.1. **Support.** See Paragraph 4. <u>Maintenance and Support</u> and Paragraph 5. <u>Fees and Payment</u> of Attachment B – Software License Agreement found earlier in this document.

11.2. **Maintenance.** See Paragraph 4. <u>Maintenance and Support</u> and Paragraph 5. <u>Fees and Payment</u> of Attachment B – Software License Agreement found earlier in this document.

12. **Professional Services.**

12.1. Service Item Description: Provide Professional Services to assist DoD customers with Continuity of Operations Planning (COOP), Information Systems Disaster Recovery (IT-DR) Planning, Crisis Management and Emergency Management planning, DoD operations planning or any other planning deployment, enhancement, testing and exercising meeting all DoD and Federal standards for readiness or any other Professional Services or Training support as requested by DoD customer.

Virtual Corporation's consulting team takes into account the current state of planning within customer's organization and works with customer's project team to define appropriate scope and objectives for consulting engagement, (see 12.2 Associated Consulting Services Expenses).

Planning services available from Virtual Corporation are tailored for the customer and utilize Sustainable Planner, Virtual Corporation's planning software tool. The consulting support available from Virtual Corporation includes but is not limited to:

12.1.1.   Develop initial or enhance existing plans for the customer's critical operations including COOP, Crisis Management, Emergency Management, and all other forms of DoD operations planning.

12.1.2. Migrate existing plans into Sustainable Planner.

12.1.3. Conduct Business Impact Analysis (BIA) to verify that all 'mission essential functions' (MEFs) and their dependencies including but not limited to critical computer applications, key personnel, suppliers and vital records (hard copy materials required by critical customer operations) have been identified with Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO) quantified.

12.1.4. Conduct walk-through (Desk Check) of plans with team participants to confirm their functionality and completeness.

12.1.5. Develop and execute an annual exercise, training program and awareness and plan update and maintenance program including exercise and training formats, schedules, and objectives ensuring that customer personnel and plans maintain currency and ensure MEF resilience.

12.1.6. Identify feasible alternative site(s) for critical customer operations and conduct site visit(s).

12.1.7. Conduct gap analysis of targeted alternate sites, documenting infrastructure and other facility enhancements required to support customer requirements at designated alternate site(s).

12.1.8. Conduct facility risk and disaster recovery preparedness assessment of customer locations including alternate sites' facility infrastructure including but not limited to water, power and HVAC, identifying gaps and recommended next steps. Propose risk mitigation strategies, where applicable.

12.1.9. Develop initial or enhance existing IT-Disaster Recovery plans for the customer's critical applications and IT infrastructure.

12.1.10. Conduct IT current state assessments, vulnerability assessments, facility risk assessments, and assist customers with development of Technology Roadmaps consistent with management objectives.

12.1.11. Assist customers in architecting and implementing IT infrastructure for production and back-up, IT-Disaster Recovery environments.

12.1.12. Professional Services will be available as requested and agreed upon with customer on non-holiday workdays.

12.2. Associated Consulting Service Expenses: Virtual Corporation works with customer to jointly develop a formal Requirements Document for Professional Services or Training support. This process can be summarized as follows:

12.2.1. Initial Requirements Document Defined: Virtual Corporation assigns a Client Relationship Manager and a Project Executive who work with customer to define initial Requirements Document for requested work which includes the following sections: objectives, scope, approach, deliverables, assumptions, roles and schedule.

12.2.2. Initial Cost Estimate Prepared: Virtual Corporation determines which consulting personnel are required to deliver customer's requested Professional Services and Training support, estimates how many hours of each consulting personnel type will

be required and calculates total cost to deliver customer's requested support applying consulting rates found in Attachment A.

12.2.3. Volume Discount Applied: Virtual Corporation compares total estimated cost against the volume discount rate schedule found in Paragraph A.6 and applies rate discount as appropriate to determine Requirements Document total cost.

12.2.4. Final Requirements Document Review: Virtual Corporation and customer discuss all Requirements Document sections and come to agreement on final Requirements Document which Virtual Corporation prepares for customer approval.

12.3. Consulting Services Personnel Categories: Virtual Corporation provides skilled consulting resources in each of the following categories: rates for each category provided in Attachment A.

12.3.1. Client Relationship Manager - Virtual Corporation executive responsible for all aspects of ensuring customer expectations are properly managed including issues resolution management.

12.3.2. Project Executive - Virtual Corporation senior consultant responsible for all aspects of a specific client engagement including staff management, deliverables ownership, quality management, and project P&L. All Project Executives have apprenticed under existing Project Executive for at least 6 months prior to leading their first engagement as Project Executive.

12.3.3. Senior COOP Subject Matter Experts (SME) - Virtual Corporation consultant responsible for assigned project duties including deliverables, task management and project administration. All Senior COOP SMEs have at least five years verified COOP or other appropriate planning consulting experience with exceptional written and verbal communications, executive facilitation and project management skills.

12.3.4. Staff COOP SME - Virtual Corporation consultant responsible for assigned project duties in their subject matter area including deliverables, task management and project administration. All Staff COOP SMEs have at least one year verified COOP or other appropriate planning consulting experience or have apprenticed under a Senior COOP SME, with strong written and verbal communications and project administrative skills.

12.3.5. COOP Software Analyst - Virtual Corporation consultant responsible for design, implementation and support of business continuity software applications using Sustainable Planner. All COOP Software Analysts have a minimum of one year hands-on experience with Sustainable Planner.

12.3.6. Project Analyst - Virtual Corporation consultant responsible for project administrative support including, but not limited to time tracking weekly consolidation, quantitative project status reporting, document preparation and distribution, document management, meeting scheduling and confirmation, project task assignments, policies and procedures maintenance. All Project Analysts have strong MS Office and document management skills, with strong written and verbal communications and project administrative skills.

13. **On-Site Training.** There is no charge for unlimited, instructor-led, web-based training. Editors and Administrators of Sustainable Planner can attend as often as they like. On-site

training places vendor's instructors at a disadvantage and therefore is charged at the following rates:

- ☐ On-site training: $2,200 per day plus approved travel expense. Training charged in whole day increments; 2 day minimum charge.

- ☐ Web-based training is recommended by the vendor.

14. **Technology Improvement.** The Government may solicit and the BPA holder is encouraged to propose independently, technology improvements to the BPA. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as the original BPA product prices.

15. **Substitution and Technology Refreshment.** If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with paragraph 8 of this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

B. AUTHORIZED USERS AND POINTS OF CONTACT
1. **Authorized Users:**

a. The BPA is open for ordering by all Department of Defense (DoD) Components. For the purposes of this agreement, a DoD component is defined as: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, NATO, the Intelligence Community and FMS with a Letter of Authorization.

b. GSA or other applicable ordering organizations/agencies are authorized to place orders under this BPA on behalf of DoD end users and must comply with DFARS 208.7400.

c. Government contractors performing work for a DoD end user (as defined above) may place Delivery Orders under this BPA on behalf of and for the benefit of the DoD entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51 and/or DFARS 251 as appropriate.

2. **BPA Points of Contact:**

a. **Contracting Office:**

Point of Contact:

National Capital Region Contracting Command
2461 Eisenhower Avenue
Alexandria, VA 22331-1700

Procuring Contracting Officer (PCO):

Donna S. Harris
(703) 325-4625
donna.s.harris@us.army.mil

POC: Calvin Artis

Phone: 703-325-3305
Email: calvin.artis1@us.army.mil

b. **Software Product Manager (SPM):**

Software Product Manager (SPM):
Computer Hardware, Enterprise Software
And Solutions

https://chess.army.mil/ascp/commerce/index.jsp

SPM: Joe Simpson
Phone: 732-532-7395
Fax: (732)532-5185
Email: joseph.m.simpson@us.army.mil

c. **Customer Point of Contact:**   (To be specified on each order.)

d. **Vendor Primary Contact: (and BPA Program Manager)**

Virtual Corporation
98 Route 46, Suite 12
Budd Lake, NJ 07828

Scott W. Ream
President
(973) 426-1444 (office)
(973) 426-1014 (fax)
sream@virtual-corp.net

e. **Vendor Contracting Contact:**

Margaret D. Langsett
EVP
Same address and phone numbers
mlangsett@virtual-corp.net

f. **Vendor Technical Contact:**

Jennifer Kline
Technical Services Liaison Manager
Same address and phone numbers
jkline@virtual-corp.net

C. ORDERING

1. DFARS Section 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an ESA before using another method of acquisition. These steps for the buyer are summarized from the DFARS:

a. Check the Enterprise Agreement Summary Table to determine if software rights or maintenance have already been purchased and are available from DoD inventory. If they are available, purchase the designated software from DoD inventory and reimburse the SPM.

b. If the required software rights or maintenance are not available from inventory or from an ESA, you may use an alternate method of acquisition, subject to applicable laws and policy.

c. If the required software rights or maintenance are not available from inventory but are available from an ESA, you must follow the procedure in the DFARS Section 208.74.

d. If you must obtain the software or software maintenance outside the DoD ESA, you may seek a waiver from a management official designated by your DoD Component.

This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at http://www.esi.mil and is publicly accessible. The Government will also post this contract to https://chess.army.mil/ascp/commerce/index.jsp .

2. **Delivery Orders.** The scope of this effort is worldwide. Delivery requirements and administration will be stipulated on Delivery Orders.

Ordering via this BPA is decentralized. Orders are prepared by an authorized Government Ordering Officer, in accordance with the terms and conditions of this BPA and the GSA Schedule, or prime contractor authorized by a Government Contracting Officer in accordance with FAR Part 51. Orders may be placed by EDI, credit card, facsimile, on an authorized form such as a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155.

Notice to Ordering Offices: This is a multiple award BPA established competitively against GSA Schedule. It is the responsibility of the Ordering Officer to --

a. Comply with the ordering procedures of FAR 8.4 and DFARS 208.4

b. Obtain competition and/or execute brand name or limited source justifications as applicable;

c. Ensure compliance with all fiscal laws prior to issuing an order under this BPA;

d. Incorporate into the order any regulatory and statutory requirements that are applicable to the agency for which the order is placed, if pertinent requirements are not already included in this BPA; and,

e. Ensure the vendor selected for the order represents the best value and the lowest overall cost alternative.

3. **Users' Ordering Guide.** Virtual Corporation shall develop a Users' Ordering Guide in coordination with the Government that will be posted to Virtual Corporation's web site and various Government sites. The Ordering Guide shall be submitted to the SPM and PCO within thirty (30) days of BPA issuance and made available on Virtual Corporation's home page upon written approval. This guide shall be continuously updated as required. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

   a. URL where a complete list of products available, with appropriate contract line item numbers (CLINs) and associated prices can be found
   b. Government and Contractor Points of Contact
   c. Description of the ordering process
   d. Program Terms and Conditions
   e. License Terms and Conditions
   f. Information such as CAGE, DUNS, TIN, Business Size, etc. necessary to complete a Contract Action Report (CAR) in the FPDS-NG system
   g. Range of discounts
   h. Links to DoD ESI and the Government web sites

4. **E-Commerce Site.**   It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, Electronic Data Interchange (EDI) capability, Government procurement card, and vendor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, Virtual Corporation shall participate to achieve this objective. On-line ordering is not currently in place with Virtual Corporation. We are able to submit our invoices via email or through a procurement web site. Payments can be submitted to Virtual via EFT or ACH. If there is another desired mechanism we will work with DoD to put it in place.

This BPA may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.

5. **Delivery Schedule.** Virtual Corporation shall make available the current version of software via electronic download within one day of receipt of order.

6. **Delivery Notice.** Unless otherwise agreed to, all deliveries ordered under this BPA must be accompanied by a delivery notice, ticket or sales slips that must contain at a minimum the following information:

   a. Name of Contractor
   b. GSA Contract Number
   c. BPA Number
   d. Product Description/Model numbers
   e. Delivery order number
   f. Date of purchase
   g. Quantity, unit price and extension of each item (unit prices need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show the information)
   h. Date of shipment

7. **Suspension.** There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, Virtual Corporation shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

D. INVOICING AND PAYMENT

1. **Invoicing.** The requirements of a proper invoice are as specified below as required by FAR 52.212-4 in the Federal Supply Schedule contract. Full text of this clause can be found on the web at URL: http://farsite.hill.af.mil/. Virtual Corporation shall submit an original invoice and three copies (or electronic invoice, if authorized), to the address specified on the delivery orders issued against the BPA. An invoice must include --

   a. Name and address of the Contractor;
   b. Invoice date and number;
   c. Contract number, contract line item number and, if applicable, the order number;
   d. Description, quantity, unit of measure, unit price and extended price of the items delivered;
   e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
   f. Terms of any prompt payment discount offered;
   g. Name and address of official to whom payment is to be sent;
   h. Name, title, and phone number of the person to be notified in event of defective invoice;
   i. Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract; and
   j. Electronic funds transfer (EFT) banking information.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125. Prompt Payment Contractors are encouraged to assign an identification number to each invoice.

2. **Fast Payment Procedure** The provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (MAY 2006) are incorporated in this BPA by reference and pertain to Credit Card purchases or other applicable order deliveries. Fast Payment procedures may be used when the conditions of FAR 13.402 are met and the delivery order authorizes Fast Payment. Full text of this clause can be found on the web at URL: http://farsite.hill.af.mil/.

3. **Precedence.** The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of the BPA and the Contractor's invoice, the provisions of the BPA will take precedence.

E. BPA MANAGEMENT AND OVERSIGHT

1. Virtual Corporation must provide centralized administration, in the form of a Program Manager, in support of all work performed under this BPA.   The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions would include customer

service, educating the sales force and submission of monthly/quarterly reports and approved fee payments.

Virtual Corporation BPA Program Manager: Scott W. Ream
President
Same address and phone numbers
sream@virtual-corp.net

2. **Report of Sales.** A Report of Sales as described herein shall accompany the remittance of the ACT Fees to enable verification of the fee amounts rendered. Submission of the Report of Sales shall be submitted to the SPM and the PCO in electronic format within fifteen (15) days following the completion of the monthly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment C. Negative reports are required. The SPM or PCO shall provide written approval of each report. At the end of each calendar quarter, the written approval provided to Virtual Corporation will be accompanied by a request to remit ACT fees. The SPM or PCO will provide copies of the Report of Sales on a quarterly basis to the DoD Components participating in fee sharing.

3. **United Nations Standard Products and Services Code**. The United Nations Standard Products and Services Code (UNSPSC) is a required field of the Report of Sales found in Attachment C. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at http://www.unspsc.org.

4. **Records.** Virtual Corporation shall maintain archival copies of all orders for the life of the BPA. Copies shall be made available to the Government upon request.

5. **Program Management Reviews (PMR).** Virtual Corporation shall participate in regular reviews of the progress of the BPA. Reviews shall be held at least twice yearly as scheduled by the Software Product Manager. During these reviews Virtual Corporation shall report on among other things, status of BPA sales, sales leakage, marketing and any outstanding issues concerning the BPA. PMR agenda and presentation format shall be provided prior to each PMR. Travel expenses are the responsibility of Virtual Corporation.

6. **Sales Leakage**. The goals of the ESI Program can only be realized through cooperation between the Government and Virtual Corporation to direct appropriate sales through the ESI vehicles. Virtual Corporation shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. Virtual Corporation shall also establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

7. **Marketing.** Virtual Corporation shall dedicate reasonable resources to this effort and work to market and advertise this agreement. Desired actions include: advertising resultant vehicles on Virtual Corporation's Internet site and advertising the agreement at relevant trade shows, participation in DoD Component sponsored events and news media geared to Government/DoD IT people.

8. **Enterprise Integration Toolkit.** The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense (L&MR) Logistics Systems Management (LSM) to assist DoD Program Managers, Contracting Officers and members of the Integrated Project Team (IPT) in the acquisition and implementation of Commercial Off The Shelf (COTS) Business Systems software.

The Toolkit provides guidance, processes and tools to define program needs and determine how to best meet these needs through an external acquisition via a three-tiered Roadmap to guide the entire life-cycle from problem definition to solution roll-out. It provides a collection of best practice tools adopted from the commercial industry, and includes more than 100 best practice templates, guides, checklists, and samples.

Because the Toolkit is not vendor specific and may be applied across a variety of COTS software package implementations, including this BPA, Virtual Corporation, shall be familiar with the Toolkit and include as part of the Marketing effort required above, a description of the Toolkit for their customers, and a link to the Enterprise Toolkit web site at: https://acc.dau.mil/CommunityBrowser.aspx?id=153210&lang=en-US.

F. Standards.

1. **YEAR 2000 Compliance**. All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

2. **DISR Compliance.** All products offered shall comply with appropriate standards enumerated in the DoD IT Standards Repository (DISR). The DISR is maintained by the DoD Executive Agent for IT Standards, and the mandated compendium can be obtained from Mr. Dave Brown 703-681-2645; dave.brown@disa.mil. The DoD IT standards management tool, DISRonline is available for use by CAC-equipped authorized parties and can be accessed for account requests at https://disronline.disa.mil.

3. **Common Security Configurations.** The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal Desktop Core Configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows XP and Vista (in Protected Mode on Vista). For the Windows XP settings, see: http://csrc.nist.gov/itsec/guidance_WinXP.html, and for the Windows Vista settings, see: http://csrc.nist.gov/itsec/guidance_vista.html. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use an installer service for installation to the default "program files" directory and should be able to silently install and uninstall. Applications designed for normal end users shall run in the standard user context

without elevated system administration privileges.

Publisher shall also certify that any subsequent product/module for the life of the agreement is/are fully functional and operate correctly as intended on systems using Federal Desktop Core Configuration (FDCC) prior to any product/module revisions being made available for Government use. Further, the Publisher shall maintain operability with FDCC standards as they evolve.

4. **Net-Centricity**. The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint warfighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI vendor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cio-nii/docs/NetCentric_Checklist_v2-1-3_.pdf, to provide information on the Net-Centric posture of their IT products and services.

5. **Section 508 of the Rehabilitation Act Compliance.** All products provided under this BPA must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov. The Contractor's Section 508 compliancy information can be found at (*enter web site*).

6. **Additional Clauses.** Orders issued against this BPA are subject to the clauses included in the underlying GSA Schedule and the additional DFARS clauses listed below that are incorporated by reference in this BPA. Ordering Offices should consider the requirements of DFARS and the FAR supplement of the end user component, as it applies to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the delivery order issued by the Ordering Office.

http://www.acq.osd.mil/dpap/dars/dfars/index.htm
http://acquisition.gov/comp/far/index.html
http://farsite.hill.af.mil/

252.204-7000   Disclosure of Information (DEC 1991)

252.204-7004   Alternate A (SEP 2007) - substitute paragraph (a) of this clause for paragraph (a) of the clause at FAR 52.204-7 -Central Contractor Registration (APR 2008)

252.209-7004   Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (DEC 2006)

252.232-7009   Mandatory Payment by Governmentwide Commercial Purchase Card (DEC 2006)

252.232-7010   Levies on Contract Payments (DEC 2006)

252.246-7000   Material Inspection and Receiving Report (MAR 2008)

252.212-7001   Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (JAN 2009)

(a) Virtual Corporation agrees to comply with the following Federal Acquisition Regulation (FAR) clause, which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

_____   52.203-3   Gratuities (APR 1984) (10 U.S.C. 2207)

(b) Virtual Corporation agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses, which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

_____	252.203-7000	Requirements Relating to Compensation of Former DoD Officials (JAN 2009) (Section 847 of Pub. L. 110-181).
_____	252.205-7000	Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
_____	252.219-7003	Small Business Subcontracting Plan (DoD Contracts (APR 2007) (15 U.S.C. 637).
_____	252.219-7004	Small Business Subcontracting Plan (Test Program) (AUG 2008) (15 U.S.C. 637 note).
_____	252.225-7001	Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d, E.O. 10582).
_____	252.225-7012	Preference for Certain Domestic Commodities (DEC 2008) (10 U.S.C. 2533a).
_____	252.225-7014	Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).
_____	252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
_____	252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Pub. L. 107-117 and the

same restriction in subsequent DoD appropriations acts).

_____	252.225-7021	Trade Agreements (NOV 2008) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
__ __	252.225-7027	Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
_____	252.225-7028	Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
_____	252.225-7036	(i) Buy American Act--Free Trade Agreements--Balance of Payments Program (JAN 2009) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

(ii) _____ Alternate I (OCT 2006) of 252.225-7036. |
_____	252.225-7038	Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).
_____	252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).
_____	252.227-7015	Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
_____	252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
_____	252.232-7003	Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).
_____	252.237-7019	Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
_____	252.243-7002	Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

___	252.247-7023	(i) Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
		(ii) _____ Alternate I (MAR 2000) of 252.247-7023.
		(iii) _____ Alternate II (MAR 2000) of 252.247-7023.
		(iv) _____ Alternate III (MAY 2002) of 252.247-7023.
_____	252.247-7024	Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), Virtual Corporation shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014	Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).
252.237-7019	Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
252.247-7023	Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
252.247-7024	Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

Section E - Inspection and Acceptance

Section F - Deliveries or Performance

DELIVERY INFORMATION

CLIN   DELIVERY DATE   QUANTITY   SHIP TO ADDRESS   UIC

Section J - List of Documents, Exhibits and Other Attachments

ATTACHMENT B – DoD SOFTWARE LICENSE AGREEMENT

SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") is made effective _____ by and between **Virtual Corporation, Inc.**, a New Jersey corporation with a principal place of business at Village Green Annex, 98 Route 46, Suite 12, Budd Lake, New Jersey, 07828 ("Virtual") and _____, with a principal place of business at _____ ("Licensee").

WHEREAS, Virtual has developed and licenses to users a software program supporting business continuity planning marketed under the name Sustainable Planner (the "Software"); and

WHEREAS, Licensee desires to utilize the Software pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Virtual and Licensee agree as follows:

1. **License**. Virtual hereby grants to Licensee a perpetual (subject to Section 11 hereof), fee-bearing, non-exclusive, non-transferable other than as described herein, limited license as described in Exhibit A attached to this Agreement and made a part thereof, to use the Software pursuant to the terms of this Agreement solely for the internal business purposes of Licensee and its affiliates and subsidiary and parent organizations. This license shall be transferable within any Department of Defense (DoD) or other federal government agency (Licensing Agency) except that such transfer of license shall not occur prior to the license being in effect for one (1) year with the then current Licensee. The license acquired hereunder provides for usage by Licensee of a single instance of the Software residing on a single server. Licensee may acquire from Virtual additional licenses for the ability to maintain multiple instances per server and/or for licenses of copies of the Software to run on additional servers upon payment of license fees required by Virtual. Upon execution of this Agreement and Virtual's receipt of the license fee required hereunder upon such execution, Virtual shall deliver the Software to Licensee electronically and upon receipt thereof, Licensee shall notify Virtual in writing of the location of the server

where the Software will reside. Licensee shall provide Virtual with prior written notice of any change in server location. Licensee shall be responsible for securing any third party hardware or software necessary or desirable to operate in conjunction with the Software at Licensee's sole cost and expense. The Software and related documentation are copyrighted by and proprietary to Virtual. Virtual retains title and ownership of the Software and documentation. Virtual shall also retain title and ownership of any upgrades, modifications or enhancements made to the Software, regardless of whether made at the request or suggestion of Licensee. Licensee acknowledges that the Software and related documentation contain valuable trade secrets and other proprietary information belonging to Virtual. Licensee agrees to hold the Software and related documentation in confidence and take all reasonable steps to prevent disclosure to others. Title to any and all data processed through, uploaded, or submitted by Licensee or its subsidiaries, parents, and affiliates to the Software shall be the exclusive property of Licensee and Virtual shall not have or accrue any other licenses or any title or ownership interests to such data. Any such data (except data otherwise available to the general public) is confidential and Virtual shall treat such data as confidential and shall not reveal or discuss such data with any other person or entity, except as authorized or directed by Licensee or compelled by law or court order. Virtual may not sell, license, disclose, assign, or otherwise transfer any such data without Licensee's prior written consent except for disclosure of such data within the context of the Software to those employed by Virtual to assist in the operation and support of the Software. To the extent the Software is embedded with material owned by third parties for which a license is required, Virtual shall identify such material and secure for Licensee a license to use such material in the Software, which license shall be subject to Licensee's approval.

2.   **Restrictions**. Licensee shall not (i) modify, copy, duplicate, reproduce, license or sublicense the Software or the documentation related thereto, or transfer (electronically or otherwise) or convey the Software or any right in the Software to anyone else, except Licensee may make one copy of the Software to be maintained on a back-up server at Licensee's or a third party disaster recovery facility strictly for disaster recovery or disaster recovery testing purposes, which copy may not be used contemporaneously with the licensed copy of the Software, except for a limited duration during a disaster or testing of its disaster recovery procedures, provided Licensee provides Virtual with written notice of the location of such copy; (ii) use the Software except as permitted in this Agreement; (iii) translate, reverse engineer, decompile or disassemble the Software or any part thereof, nor create any derivative works; or (iv) remove, obliterate, alter or obscure any copyright and/or trademark notices, labels or marks or serial numbers on the Software or accompanying documentation; in any case without the express prior written consent of Virtual. Licensee acknowledges that the copy of the Software provided will be in executable object code format. Notwithstanding any ability to modify the Software in such format, Licensee agrees to the foregoing restrictions, except in the event of a release event as described in Section 3 wherein the foregoing restrictions on modification shall no longer apply to the extent provided in Section 3, and Licensee expressly acknowledges that any modification of the Software shall immediately terminate any warranties provided hereunder and Licensee shall have no further right to receive maintenance or support (without any refund of funds paid therefore). This is a license and not an agreement for sale. Licensee obtains no rights other than the license granted in this Agreement and Virtual reserves all rights not expressly granted herein. Licensee shall limit access to the Software to its employees, agents and representatives who are required to have such access, and Licensee shall ensure that such employees, agents and representatives agree to comply with the restrictions in this Agreement. Licensee acknowledges and agrees that violation in any respect of the provisions of this Section or this Agreement may cause irreparable injuries to Virtual and, in addition to the termination of this Agreement, Virtual may seek injunctive relief to prevent or discontinue any such violation, which shall be in addition to, and in no way in limitation of, any and all remedies or rights to recover damages Virtual may have at law or in equity or under this Agreement for the enforcement of such provision and/or for breach of this Agreement by Licensee. Disputes in connection with the enforcement of such provision, breach of this Agreement by Licensee and/or the retrieval of the Software shall be subject to the Contract Disputes Act, Title 41 Chapter 9 – Contract Disputes.

3.   **Release Event**. Upon the occurrence of a release event as defined herein, subject to the terms of this Section, Licensee shall have the right to use the source code for the Software for the sole purpose of continuing the benefits afforded to Licensee by this Agreement and Licensee shall have any

and all rights necessary to support the Software for the internal business purposes of Licensee and its subsidiaries, parents, and affiliates. A release event shall mean: (i) Virtual files a petition in voluntary bankruptcy or an assignment for the benefit of creditors, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of insolvents by or against Virtual, except for the filing of a petition in involuntary bankruptcy which is dismissed within sixty (60) days thereafter; (ii) Virtual permanently discontinues offering support or maintenance of the Software or Virtual materially violates its support and maintenance obligations by failing to provide support and maintenance for a period of one hundred eighty (180) days in accordance with the terms of this Agreement; or (iii) Virtual discontinues commercial licensing of the Software. In the event the source code is released to Licensee hereunder, Licensee agrees to use the source code exclusively to support the use of the Software as authorized hereunder. Licensee further agrees to maintain the source code in accordance with the confidentiality provisions of this Agreement and consistent with Virtual's proprietary rights thereto. If this Agreement is rejected by Virtual as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then Licensee may elect to retain its rights as provided in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). The parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar nature in any state or foreign jurisdiction) will impede, delay or prevent the use of the source code by Licensee in accordance with the provisions of this Agreement. The source code is an "embodiment" of "intellectual property" as those terms are used in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)).

4.   **Maintenance and Support**. Upon payment of applicable fees, Licensee shall be entitled to receive maintenance and support services for use of the Software during Virtual's business hours, Monday through Friday, except normal business holidays, consisting of unlimited telephone and e-mail support for a number of Editors and Administrators defined in Exhibit A of this Agreement and designated by Licensee (as such positions are defined in Virtual's user guides), unlimited electronic access to user manuals, including the User Quick Reference Guide and the Editor and Administrator Guides to the extent such manuals are offered and maintained by Virtual as generally available to its licensees, and unlimited participant enrollment in training classes offered by Virtual. Such maintenance and support services shall be provided by Virtual in accordance with its policies thereon. Licensee shall provide Virtual with reasonable assistance, information and resources to perform all maintenance and support services. Virtual shall not be obligated to provide maintenance and support services in any of the following situations: (a) the Software has been changed, modified or damaged; (b) Licensee fails to implement any major release of the Software provided by Virtual hereunder (i.e., a version release that changes the single digit on the left of the decimal); provided that Licensee's obligation to implement major releases shall not apply if Virtual provides more than one major release in an annual term; (c) the Software is used on a platform not supported by Virtual or otherwise not in accordance with the Software documentation; (d) the problem is caused by Licensee's negligence, hardware malfunction or other causes beyond the reasonable control of Virtual; (e) Licensee has not paid maintenance and support fees due hereunder when due; or (f) this Agreement is terminated in accordance with the terms hereof.   In the event Virtual ceases offering maintenance and support services with respect to the Software, Licensee shall be entitled to a pro rata refund of maintenance fees paid for the balance of the annual term remaining after cessation of such services.

5.   **Fees and Payment**. In consideration for the grant of the license and the use of the Software as set forth in this Agreement, Licensee agrees to pay Virtual a non-refundable license fee in the amount defined in Exhibit A of this Agreement, payable upon execution of this Agreement. The first year of maintenance and support services as set forth in Section 4 of this Agreement shall be provided by Virtual at no additional charge. Thereafter, Licensee has the option to pay Virtual an annual maintenance and support fee equal to 20% of the acquisition price of the license. If Licensee elects not to renew maintenance and support services and pay the annual maintenance fee for any renewal term and thereafter desires to obtain such services from Virtual, Licensee shall be required to pay a reinstatement fee equal to the amount of the one hundred fifty percent (150%) of the annual maintenance and support fee and an additional one hundred fifty percent (150%) for each year Licensee did not pay for maintenance and support services. Further, Licensee shall be required to pay the annual maintenance

and support fee for the year following the reinstatement date. The annual maintenance and support fee for any maintenance term upon renewal in accordance with the terms hereof shall be fixed at the rate of 20% of the license fees paid by Licensee hereunder for the initial five (5) year term of this BPA. Thereafter, the annual maintenance and support fee shall be determined by the mutual agreement of both parties. All amounts owed by Licensee to Virtual pursuant to this Agreement shall be invoiced and paid by Licensee in compliance with 31 USC 3903.

6.   **Verification**. Virtual may, at any time during and after the term of this Agreement, request and gain access to Licensee's premises and to Licensee's servers (wherever located), to the extent permitted within government security constraints, for the purpose of conducting an audit to determine and verify that Licensee is in compliance with the terms and conditions of this Agreement. Licensee will promptly grant such access and cooperate with Virtual in any such compliance review. If any review reveals that Licensee has breached any term or condition contained herein, Licensee shall immediately remedy such breach. In addition, and without limiting the foregoing, during the term of this Agreement and for a period of one (1) year thereafter, upon notice to Licensee by Virtual, Virtual shall have the right to request that Licensee audit its relevant books and records using its internal audit controls and procedures, however not more than one per quarter. The request shall include a scope of the audit as well as a request for any specific information needed by Virtual. Within thirty (30) days following the notice from Virtual, Licensee shall provide Virtual with a report of the results of the audit and a copy of the relevant books, records and other documents reasonably necessary to verify the accuracy of Licensee's audit. Licensee may redact from the books, records and other documents provided to Virtual any information that reveals the identity or confidential information of Licensee or other confidential information that is not relevant to the purposes of the audit. Any disputes concerning the results of an audit of Licensee's books and records shall be addressed in compliance with Contract Disputes Act, Title 41 Chapter 9 – Contract Disputes and FAR 52.212-4. Virtual shall have no right to conduct an audit of Licensee's financial books and records on its or its auditor's behalf except in accordance with this Section and in furtherance of the terms of this Agreement.

7.   **Warranty of Functionality**. For a period of ninety (90) days after Licensee is granted access to the Software through the hosted version or delivery of the Software for an installed version, as the case may be (whichever is earlier), Virtual warrants that the Software shall perform in all material respects according to Virtual's specifications concerning the Software when used with the appropriate computer equipment and when operated in accordance with the Software documentation. In the event of any breach or alleged breach of this warranty, Licensee shall promptly notify Virtual. Licensee's sole remedy shall be that Virtual shall correct the Software so that it operates substantially according to the warranty. This warranty shall not apply to the Software if modified or altered by anyone, if damaged, or if used improperly or on an operating environment not approved by Virtual or not operated in accordance with the Software documentation. Licensee acknowledges that the Software may include internal auditing programming to monitor and enforce compliance with the terms of this Agreement restricting the number of servers the Software may reside upon, the number of instances on each server and the number of users, named and concurrent, granted access. Such internal auditing programming may restrict use of the Software in excess of the number of users or the single instance of the Software residing on a single server; provided, however, that upon Licensee's written request and payment of additional license fees, at any time, Virtual shall modify such programming as may be necessary to permit increased usage of the Software subject to the terms of this Agreement.   Subject to the foregoing programming, Virtual represents and warrants that: (i) the Software shall not have any system interface intentionally designed to allow it or an authorized user to bypass storage or fetch protection, password checking, system/application security, or obtain control in any authorized state; (ii) there will be nothing designed within the Software that is intended to allow it or an authorized user to compromise the host system's operating system; (iii) the Software shall not have any back doors to the computer system; (iv) the directory structure of the Software and its access can be controlled and maintained by a systems administrator(s) of Licensee or, in the case of the hosted version of the Software, a server administrator of Licensee; provided that such personnel is qualified in systems or server administration, as the case may be, specific to the platform for the Software utilized by Licensee; and (v) Virtual uses commercially reasonable efforts to test or protect the Software against any virus, time bombs, Trojan horses, and/or other intentionally disabling devices,

including (without limitation) codes, commands, or instructions designed to maliciously access, alter, delete, damage or disable the Software or any Licensee software, hardware, or data.

8.   **Software Enhancements**. For so long as Licensee is entitled to receive maintenance and support services hereunder and has made payment required therefore, Virtual shall provide to Licensee any new, corrected or enhanced versions of the Software as created by Virtual. Such enhancements may include modifications to the Software which increase the speed, efficiency or ease of use of the Software, correct errors in the Software or add additional capabilities or functionality to the Software. This does not include additional modules nor does it include any additional standalone applications that are integrated with the Software. Licensee acknowledges that Virtual is under no obligation to update, modify, or enhance the Software, except defect or problem fixes as set forth in Section 7 and Licensee acknowledges that changes in technology or other factors may render the Software obsolete.

9.   **Defect Resolution**. For so long as Licensee is entitled to receive maintenance and support services hereunder and has made payment required therefore, Virtual shall use reasonable commercial efforts to review, analyze, resolve, and correct any material deficiency or problem in using, operating, or executing the Software or any substantial deviation from the actual performance, utility, and functionality of the Software as represented in the Software documentation issued by Virtual from time to time ("Defects") within a reasonable time after such Defect is reported to Virtual by Licensee. Virtual shall utilize qualified software engineers for the purpose of supporting the Software and resolving or correcting Defects hereunder. If appropriate as determined in the reasonable professional judgment of Virtual, Virtual shall provide support on-site at the facilities of Licensee or its affiliates (as the case may be) or any other location as agreed to in writing by the parties.

10.   **Warranty Disclaimer**. EXCEPT THE SPECIFIC WARRANTIES SET FORTH IN SECTION 7 OF THIS AGREEMENT, VIRTUAL DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE GOODS AND SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE SOFTWARE, EXCEPT AS EXPRESSLY PROVIDED HEREIN. VIRTUAL HEREBY EXCLUDES ALL IMPLIED WARRANTIES TO THE EXTENT PERMITTED BY LAW, INCLUDING, SPECIFICALLY, ANY IMPLIED WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. VIRTUAL HEREBY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OR OF MERCHANTABLE QUALITY, OR OF FITNESS FOR ANY PURPOSE, PARTICULARLY, SPECIFIC OR OTHERWISE, OR OF NONINFRINGEMENT, CONCERNING THE SOFTWARE AND ANY SERVICES PROVIDED HEREUNDER. VIRTUAL DOES NOT WARRANT THAT ALL ERRORS IN THE SOFTWARE CAN OR WILL BE CORRECTED OR THAT THE FUNCTIONALITY OF THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS.

11.   **Limitation of Liability and Indemnification**.

A.   Excluding liability for third party claims arising out of Section 11 B hereof, neither party shall be responsible for, and neither party shall pay, any amount of incidental, consequential or other indirect damages, whether based on lost revenue or otherwise, regardless of whether the party was advised of the possibility of such losses in advance. Excluding liability for third party claims arising out of Section 11 B hereof and liability for Licensee's breach of the license grant under Section 1 or restrictions under Section 2, in no event shall either party's liability hereunder exceed the license fees paid, or to be paid, in accordance with Section 5 hereof, regardless of whether the claim is based on contract, tort, strict liability, product liability or otherwise. Virtual shall not be responsible for any costs or damages associated with the loss of use of the Software or any other resources, loss of business or profits, any loss of data, or costs of substitute programs. Licensee expressly acknowledges and agrees that despite the nature of the Software, Virtual shall not be responsible for any damages relating to business continuity or the failure thereof.

B.   Virtual represents that, to its knowledge, no portion of the Software is derived from any copyrighted material or is subject to any interest, proprietary or otherwise that is not properly licensed by Virtual, or any asserted claim of any third party. Virtual agrees to indemnify and hold harmless Licensee and its subsidiaries, parents, and affiliates under its control, and their directors, officers, employees and agents, against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) arising out of or related to any claim that Licensee's authorized use or possession of the Software, or the license granted hereunder, infringes or violates any United States patent, copyright, trade secret or other proprietary right of any third party. If the Software or any portion thereof is held, or in Virtual's reasonable opinion is likely to be held, to infringe or violate any United States patent, copyright, trade secret, or other proprietary right of any third-party, Virtual may within a reasonable time not to exceed sixty (60) days, at its option and sole expense, either: (i) secure for Licensee the right to continue use of such item; (ii) replace such item with a substantially equivalent item not subject to any such claim; or (iii) modify such items so that it becomes no longer subject to any such claim; provided, however, that after any such replacement or modification, the Software or portion thereof must continue to substantially conform to any requirements or specifications, and further provided, that any modified or replaced item shall be subject to any representation or warranty contained herein. Anything in this Section to the contrary notwithstanding, Virtual shall have no liability for any third party claim of infringement based upon (i) Licensee fails to implement any major release of the Software provided by Virtual hereunder (i.e., a version release that changes the single digit on the left of the decimal) if such infringement would have been avoided by Licensee's implementation of such major release; provided that Licensee's obligation to implement major releases shall not apply if Virtual provides more than one major release in an annual term; (ii) use, operation or combination of the applicable Software with non-Virtual programs, data, equipment or documentation not recommended or acknowledged by Virtual, if such infringement would have been avoided but for such use, operation or combination; or (iii) the use of the Software beyond the scope of the license provided hereunder if such infringement would have been avoided but for such use.

12.   **Termination**. This Agreement shall be effective on the date it is fully executed and shall continue until terminated in compliance with FAR 52.212-4.

13.   **Internet Disclaimer**. Licensee understands and agrees that use of or connection to the Internet is inherently insecure and that connection to the Internet provides opportunity for unauthorized access by a third party to Virtual's or Licensee's computer systems (including, but not limited to, the Site), networks and any and all information stored therein. INFORMATION TRANSMITTED AND RECEIVED THROUGH THE INTERNET CANNOT BE EXPECTED TO REMAIN CONFIDENTIAL, AND VIRTUAL DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY AND NON-CORRUPTION OF ANY INFORMATION SO TRANSMITTED, OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. VIRTUAL SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF LICENSEE'S CONNECTION TO OR USE OF THE INTERNET, AND VIRTUAL SHALL NOT BE RESPONSIBLE FOR ANY USE BY LICENSEE OR ANY SUBSCRIBER OR PATRON OF LICENSEE'S INTERNET CONNECTION IN VIOLATION OF ANY RULE, LAW OR REGULATION. Virtual shall not be responsible for failure of Licensee to access and use the hosted version of the Software and/or the Site as a result of Internet network outages or other causes not within the control of Virtual.

14.   **Notice**. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services at the address set forth in this Agreement.

15.   **Severability**. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

16.   **Survival**. Any provision of this Agreement that requires or reasonably contemplates the performance or existence of obligations by either party after the termination of this Agreement shall survive the termination period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year hereinafter written.

VIRTUAL CORPORATION, INC.

By:_____
    Name:
    Title:

LICENSEE

By:_____
    Name:
    Title:

EXHIBIT A – License Limitations

This Software License Agreement ("Agreement") is designated to be a Tier 1 or 2 or 3 license as defined in this Exhibit A with the limitations described below:

    a.   Number of Concurrent Users: _____

    b.   Number of Total Named Users: _____

    c.   Number of Editors/Admins Authorized To Receive Support   Four (4)

    d.   License purchase price: _____

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001					$0.00
	Software Support and Maintenance FFP See the attached Price list.				
	FOB: Destination				

NET AMT $0.00

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY

0001   Destination   Government   Destination   Government

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	N/A	N/A	N/A	N/A

<u>ATTACHMENT A DOD PRICE LIST</u>
<u>DOD PRICE LIST ATTACHMENT A</u>

ATTACHMENT A – DoD PRICE LIST

SIN C7030: Software   Government Price:
Sustainable Planner

	Government Price:
Tier 1 - Single Concurrent user	$24,487.66
Tier 2 - 5 Concurrent users	$34,559.19
Tier 3 - Unlimited Concurrent users	$53,517.38

Software Maintenance Fee

Per year starting year 2 if purchased annually	20% of GSA Price
Per year if pre-purchased in minimum 3-year increments	15% of GSA Price

SIN(s): C D310 IT Professional Services

Labor Categories	Government Price:
Relationship Manager	$241.80
Project Executive	$203.11
Senior SME	$183.77
Staff SME	$164.42
BC Software Analyst	$140.25

Project Analyst $116.06

SIN C R499: MOBIS Consulting Services
    Labor Categories   Government Price:
    Relationship Manager $241.80
    Project Executive $203.11
    Senior SME $183.77
    Staff SME $164.42
    Project Analyst $116.06